A/48/44/Add.1

United Nations

Report of the Committee against Torture

General Assembly

Official Records • Forty-eighth Session
Supplement No.44A (A/48/44/Add.1)

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United Nations • New York, 1994

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ISSN 1020-170X

ACTIVITIES OF THE COMMITTEE AGAINST TORTURE PURSUANT TO ARTICLE 20 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Summary account of the results of the proceedings concerning the inquiry on Turkey

[Original: French]

[18 February 1994]

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I. INTRODUCTION

1. Turkey ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46, annex) on 2 August 1988. It did not at that time declare that it did not recognize the competence of the Committee against Torture provided for in article 20 of the Convention, as it was permitted to do by the provision contained in article 28, paragraph 1, of the Convention.

2. The application to Turkey of the confidential procedure provided for in article 20, paragraphs 1 to 4, of the Convention began in April 1990 and ended in November 1992. In accordance with article 20, paragraph 5, of the Convention, the Committee, after consultations with the State party concerned in April 1993, decided, on 9 November 1993, to include in the present addendum to its sixth annual report 1/ the following account of the results of the proceedings relating to the inquiry on Turkey. The decision was taken unanimously.

II. DEVELOPMENT OF THE PROCEDURE

3. At its fourth session, in April 1990, the Committee against Torture examined in closed session the information on the systematic practice of torture in Turkey, which had been communicated to it, pursuant to article 20 of the Convention, by Amnesty International.

4. When it examined that information, the Committee also had before it other information concerning allegations of torture in Turkey originating from non-governmental sources and from the report of the Special Rapporteur of the Commission on Human Rights on questions relating to torture. 2/ In addition, it had before it a letter of 20 April 1990 addressed to its Chairman by the Permanent Representative of Turkey to the United Nations Office at Geneva.

5. After preliminary consideration of the information received, the Committee found that it was credible and contained well-founded indications that torture was practised systematically in Turkey. Accordingly, on 4 May 1990, it invited the Government of Turkey to cooperate in the examination of that information and to transmit its observations to it before 31 August 1990.

6. On 31 August 1990, the Government stated that it considered the Committee's action to exceed the powers conferred on it under the Convention.

7. At its fifth and sixth sessions, in November 1990 and April 1991, the Committee rejected the Government of Turkey's arguments and reiterated its invitation to the Government to cooperate in the examination of the information received. It was refused such cooperation.

8. At its sixth session, the Committee decided to instruct Mr. Voyame, its Chairman, and Mr. Perlas, to analyse the information concerning Turkey communicated pursuant to article 20 of the Convention, and invited them to submit to it a report and proposals for further action on that question. New reports of acts of torture in Turkey had been transmitted to the Committee in 1991 by non-governmental sources.

9. Following the report and recommendations of Mr. Voyame and Mr. Perlas, the Committee, at its seventh session in November 1991, decided to undertake a confidential inquiry and designated Mr. Dipanda Mouelle and Mr. Voyame for that purpose, Mr. Perlas having informed the Committee that he was unable to participate in the inquiry.

10. The Committee also decided to request the Government of Turkey to give its consent to a visit by the members of the Committee designated to make the inquiry in Turkey, and expressed the wish that the visit might take place in February 1992.

11. The new Government, appointed in November 1991 following parliamentary elections, stated that it was not opposed to the proposed visit by Mr. Dipanda Mouelle and Mr. Voyame. It nevertheless considered that it would be preferable for the visit by the two Committee members making the inquiry to take place after February 1992.

12. After consultations on this question between Mr. Dipanda Mouelle, Mr. Voyame and the Turkish authorities, the mission to Turkey was scheduled for 6 to 18 June 1992. Before the mission, Mr. Dipanda Mouelle, Mr. Voyame and

representatives of the Government of Turkey, held several meetings in connection with the inquiry.

13. Mr. Dipanda Mouelle and Mr. Voyame visited Turkey during the period agreed on. At Ankara, they held talks with the Minister for Foreign Affairs, the Minister of Justice, the Minister of the Interior and the Minister for Human Rights, and with other senior officials in the Turkish Administration. They also held talks with judicial officials, such as the President and Vice-President of the Constitutional Court and the Government Procurator for Ankara, and with several members of the Human Rights Commission of the Great National Assembly (Turkish parliament).

14. At Diyarbakir, the Committee members making the inquiry held talks with the local civil and military authorities, among others, and with the regional prefect responsible for enforcing the state of emergency.

15. During their mission, the Committee members making the inquiry visited in Ankara and Diyarbakir places of detention under the authority of the Ministry of the Interior and places of detention under the authority of the Ministry of Justice. They were able to talk freely with prisoners, but were denied access to certain Ministry of the Interior premises at Diyarbakir. In both cities, they held talks with officials and members of five Turkish non-governmental human rights organizations, and with several private individuals. A medical expert accompanied them and conducted examinations on alleged victims of torture.

16. Mr. Dipanda Mouelle and Mr. Voyame reported to the Committee at its ninth session, in November 1992. Their report contained the information they had received between 19 November 1991, the date on which the Committee had decided to initiate the confidential inquiry, and 15 October 1992.

17. On 16 November 1992, the Committee endorsed the conclusions relating to the inquiry which the two designated members had submitted to it, decided to transmit the report and conclusions to the Government of Turkey, and invited that Government to inform the Committee, before 31 January 1993, of the measures it intended to take concerning the Committee's conclusions relating to the inquiry.

18. The replies of the Government of Turkey, together with its observations on the inquiry report, were transmitted to the Committee on 19 March and 2 April 1993, and were considered by the Committee at its tenth session, in April 1993.

19. At that session, the Committee, having completed all the proceedings relating to the inquiry, on 20 April 1993 invited the Government of Turkey to inform the Committee of its views on the question whether a summary account of the results of the inquiry should be included in its annual report to States parties and the General Assembly. The Committee also invited the Government of Turkey to communicate its opinion on that question before the end of its tenth session, that is, before 30 April 1993, or by 30 June 1993 at the latest.

20. At the request of the Government of Turkey, the consultations were held on 27 April 1993 at a closed meeting of the Committee. The representatives whom Turkey had designated for that purpose explained that, in their Government's view, there was no justification for publishing a summary account of the results of the proceedings relating to the inquiry in the Committee's annual report.

21. The Committee, in view of the number and seriousness of the allegations of torture in Turkey which it has received, and in view of the findings on that question by the Committee members making the inquiry and the Committee's conclusions, and having considered the replies and observations of the Turkish authorities, is convinced that such publication is necessary in order to encourage full respect for the provisions of the Convention in Turkey.

III. CONCLUSIONS OF THE COMMITTEE

A. Legal rules

22. In the course of the inquiry, the Committee considered the bill amending the Code of Criminal Procedure, the Security Courts (Constitution and Procedure) Act, the Anti-Terrorism Act of 12 April 1991 and the Police (Functions and Powers) Act, the latter Act having been submitted by the Government to parliament on 26 April 1992. Among the major provisions of the bill was a sharp reduction in the duration of police custody and provisions enabling lawyers to meet the person arrested at the commencement of police custody.

23. On 16 November 1992, the date on which the Committee adopted its conclusions on the inquiry, that bill had not yet been enacted by the Turkish parliament, the Committee having expressed the view that its rapid enactment was essential. It had also expressed the view that the role of lawyers and the duration of police custody, as provided for in the bill, must as soon as possible be translated into regulations for general and immediate implementation.

24. The revised version of the bill was enacted by the Turkish parliament on 18 November 1992, the Act (No. 3842) entering into force on 1 December 1992.

25. The Committee takes note with satisfaction of the provisions of Act No. 3842 concerning police custody, notably the reduction of its duration, and of the provisions concerning the intervention and role of lawyers in defending a person who has been charged or a person held in police custody. It considers that those provisions and their effective implementation may help to protect a detainee from acts of torture and ill-treatment. It also takes note, with satisfaction, of the reduction effected by Act No. 3842 in the number of offences falling within the competence of the State Security Courts. It nevertheless regrets that persons arrested or detained in connection with an offence within the competence of those Courts (crimes against the State, crimes connected with terrorism, firearms or drugs) remain deprived by the Act of most of the guarantees enumerated in it. It considers that the maximum time-limit of 30 days for police custody, applicable to persons captured or arrested in regions under a state of emergency before they are brought before a judge, is excessive and may leave room for acts of torture by the security forces.

26. The Committee takes note with satisfaction of the provisions of Act No. 3842 concerning interrogation procedures and the collection of testimony and prohibiting ill-treatment, torture and other physical or mental violence. It also welcomes the provisions concerning the inadmissibility of statements obtained under duress. Those provisions legally reinforce and supplement the provisions which already exist in Turkish law, and those contained in the Ministry of the Interior's administrative regulations of 6 August 1991 relating to interrogation procedures. The Committee notes that no provision of Act No. 3842 relates to the right of a detainee in police custody to have access to a doctor of his choice, a right which is nevertheless set forth in the Ministry of the Interior's administrative regulations of 22 September 1992 concerning the conditions of detention of persons in police custody.

27. The Committee considers that the procedure for the forensic examination of persons in police custody should be completely separate from the police element; persons undergoing examination should be examined outside the place of detention and the contents of the medical report should not be made known to the personnel

responsible for police custody. In addition, persons in police custody should be able to request that a medical certificate be prepared by a doctor of their choice in any circumstances, and it should be possible for that certificate to be produced as evidence before the courts.

28. A judge who receives a complaint concerning statements obtained under duress should be instructed to examine in substance the lawfulness of such "evidence" without awaiting the outcome of a related procedure that is far too long. In addition, government procurators appointed to make inquiries into allegations of torture or ill-treatment, in accordance with the provisions of the Turkish Code of Criminal Procedure, should act promptly and effectively; they should be given precise instructions on this question, in accordance with article 12 of the Convention.

29. As to the measures for general and immediate implementation of Act No. 3842 desired by the Committee, the Government of Turkey has informed the Committee that the Minister of the Interior, in a circular concerning implementation of the Act addressed to the authorities concerned, has given the necessary instructions to ensure that the responsible officials will be duly informed of the new legislation in a training programme, and that the provisions in question will be implemented immediately and that practice very closely monitored in order to avoid any lapse. The Government has also provided the following statistical information which concerns suspects held in police custody before and after the entry into force of Act No. 3842:

1 November 1992-1 December 1992

Number of suspects held in police custody	8 613
Number of suspects held in pre-trial detention	1 991
Number of suspects released	6 622
Number of suspects who received the assistance of a lawyer	126

1 December 1992-1 January 1993

Number of suspects held in police custody	7 593
Number of suspects held in pre-trial detention	1 123
Number of suspects released	6 470
Number of suspects who received the assistance of a lawyer	999

30. In addition, the Government stated that the human rights manual used on courses in police colleges had been amended to reflect Act No. 3842 and to include the necessary instructions concerning implementation of its provisions.

31. The Committee considers that the information on the measures for implementation of Act No. 3842, transmitted to it by the Government of Turkey in March 1993, that is, about four months after the Act's entry into force, is encouraging. It further believes that strict supervision of the implementation of the Act should be exercised over the long term and that effective penalties should be imposed for any violation of the Act.

32. In November 1992, the Committee expressed a desire to be informed of the measures taken in Turkey to implement the Constitutional Court order of 31 March 1992 intended to abolish or amend a number of provisions of the

Anti-Terrorism Act, in particular, those of article 15 (3) providing that an administrative inquiry should be conducted by the prefectural commissions before (public) court proceedings were instituted against a public official accused of torture.

33. The Government stated that the order of 31 March 1992 had entered into force on 27 January 1993 and that, in particular, as from that date a public official accused of torture would be liable to public proceedings in accordance with the normal procedure.

34. It added that, during the period from 1 January to 30 August 1992, 115 investigations had been initiated concerning 547 persons suspected of perpetrating torture or ill-treatment, and that 355 prosecutions had been instituted against 450 persons accused of those offences.

35. The Committee, having analysed the information and testimony received from different sources during the inquiry, wishes to emphasize that penalties imposed by the courts on torturers should not be nullified by means of administrative promotions. It further considers that the scale of penalties for acts of torture should be clearly reassessed by the legislature. Torturers should not feel that they are in a position of virtual immunity from the law.

B. Allegations received during the inquiry

36. The Committee wishes to state that it has received numerous allegations of torture in Turkey originating mainly from five international non-governmental organizations and five Turkish non-governmental organizations engaged in action to promote respect for human rights. The report which the Committee members making the inquiry addressed to it also contains detailed information on dozens of testimonies which they gathered within and outside places of detention during their mission to Turkey from 6 to 18 June 1992. In addition, the Committee has received precise information on the examinations of presumed torture victims by the medical expert who lent his assistance during the inquiry, and on the talks which the Committee members making the inquiry had with the Turkish authorities about the torture allegations received.

37. The Government of Turkey has informed the Committee that it rejects all the allegations of torture submitted by non-governmental organizations, since those organizations are, in its view, deeply politicized or have never given credible proof of their impartiality. As to the testimony gathered during the mission to Turkey, the Government stated that it was derived essentially from persons presumed to be terrorists who, in line with their strategy, had every reason to claim that they had been tortured.

38. The Committee considers that, even though only a small number of torture cases can be proved with absolute certainty, the copious testimony gathered is so consistent in its description of torture techniques and the places and circumstances in which torture is perpetrated that the existence of systematic torture in Turkey cannot be denied.

39. The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the

consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.

40. The Committee deplores and condemns any act of violence perpetrated by armed groups, regardless of their origin, particularly if they terrorize the population or try to destabilize the democratic institutions.

41. The Committee wishes to point out, however, that under article 2, paragraph 2, of the Convention, no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

42. The Turkish authorities, who have undertaken to respect that provision and, what is more, have publicly condemned torture as a crime against humanity, should take measures to ensure that such a provision is implemented strictly by all State authorities. Particular attention should be paid to implementation of that provision in the provinces under a state of emergency.

43. In this connection, efforts should be made to prevent certain departments within the Ministry of the Interior in particular from becoming, as it were, a State within a State and appearing to escape control by senior authorities. To that end, inspections of interrogation centres by Ministry of the Interior officials might be envisaged, and penalties should be imposed on persons violating article 13 of Act No. 3842 and the administrative regulations of 6 August 1991 concerning interrogation procedures, which explicitly prohibit the use of torture.

44. Furthermore, efforts should be made to acquaint existing law-enforcement personnel and personnel currently undergoing training with interrogation and investigation techniques that do not involve any kind of torture or other cruel, inhuman or degrading treatment.

45. In connection with the latter point, the Government of Turkey has informed the Committee that police and gendarmerie officers and senior officials in the Directorate-General for Security were due to take, or were currently taking, training courses on interrogation methods, mainly in European countries members of the Council of Europe.

46. For its part, the Committee considers that any programme for the training of public officials should highlight the fact that the practice of torture is not only a criminal act which carries severe penalties, but also an act which is degrading and shameful for its perpetrators and their superior officers.

47. The Committee wishes to emphasize that it has suggested to the Government of Turkey that it should set up national machinery to combat torture. An independent commission might be established, under the aegis of the Ministry for Human Rights, comprising members of the professions concerned (lawyers and doctors) and representatives of non-governmental organizations, together with eminent national figures recognized as having campaigned against this evil. The commission would have access to any detention or interrogation centre it wished to visit. Its responsibilities would include regular and frequent visits to all places of detention, particularly those under the authority of the Ministry of the Interior, meeting persons held in custody in those places, consulting prison registers, receiving complaints of torture and transmitting them to the

prosecutor's office. Its reports would be publicized and it would play an advisory and initiatory role in the drafting of any parliamentary bill concerning action to combat torture.

48. The Committee further considered, in November 1992, that the following immediate measures were necessary:

(a) The use of a blindfold during questioning should be expressly prohibited;

(b) A programme of generalized legal assistance, free of charge, should be instituted so that any person held in police custody, especially those with only a slight knowledge of the rules of law, can benefit from the full protection of the law;

(c) Access by lawyers to places of detention should be made easier. In the case of persons held in police custody, premises should be made available where interviews between the accused person and his counsel can take place within sight, but not within earshot, of a police officer or official of the establishment concerned.

49. The Committee has received no response to the recommendation contained under (a). As to its recommendations (b) and (c), the new Turkish criminal legislation would represent a satisfactory response if it did not provide for reservations for defendants tried by the State Security Courts.

C. Places of detention under the authority of the Ministry of the Interior

50. The Committee considers that places of detention under the authority of the Ministry of the Interior pose many problems from the standpoint of article 20 of the Convention. All the testimony collected before, during and after the visit by the Committee members making the inquiry corroborates this assertion.

51. Although the Government of Turkey has taken initiatives to combat torture, the current situation is still one in which torture is systematically practised in various premises under the authority of the Ministry of the Interior. There is an obvious discrepancy between, on the one hand, the measures taken and the intentions expressed by the authorities with regard to action to combat torture, and on the other, the practice followed in the premises of the Ministry of the Interior.

52. As to the layout of places of detention, particularly the solitary confinement cells, the Committee, in November 1992, called on the Turkish authorities to demolish immediately and systematically all the solitary confinement cells known as "coffins", which in themselves constitute a kind of torture. Those cells measure approximately 60 by 80 centimetres, they have no light and inadequate ventilation, and the inmate can only stand or crouch. The Committee also requested that other solitary confinement cells should as soon as possible be brought up to international standards, such as those contained in the Standard Minimum Rules for the Treatment of Prisoners.

53. The Government of Turkey has formally undertaken to comply with the Committee's recommendations concerning solitary confinement cells and has drawn the Committee's attention to the relevant provisions of the regulations of 22 September 1992 concerning conditions of detention of persons in police

custody, which provide, inter alia, for improvements in places of detention and adequate dimensions for individual cells, in conformity with European rules and standards. The Government has stated that the physical conditions of places of detention and administrative procedures relating to police custody were adapted to the requirements of the new regulations as soon as they entered into force on 23 September 1992.

D. Places of detention under the authority of the Ministry of Justice

54. As to the implementation of article 20 of the Convention, the Committee considers that places of detention under the authority of the Ministry of Justice pose no problems in this respect.

55. However, in November 1992, the Committee transmitted the following recommendations to the Government of Turkey:

(a) In general, practical efforts should be made, and funds allocated, to solve the problem of prison overcrowding. To that end, new places of detention more in keeping with international standards should be built and conditions in existing places of detention, notably with regard to hygiene, should be improved;

(b) The solitary confinement cells in prison No. 1 at Diyarbakir should be demolished; to use them would, in any case, be contrary to the provisions of the Convention;

(c) The women prisoners currently held in prison No. 2 should be transferred to another prison.

56. The Government of Turkey has informed the Committee that the total capacity of Turkish prisons is 83,000, while the number of detainees is 30,000. The relative overcrowding in certain prisons has been eliminated through the implementation of new measures. It has further stated that the solitary confinement cells in prison No. 1 at Diyarbakir are not in use and that the women prisoners in Diyarbakir prison have been transferred to Sanliurta prison.

IV. FINAL STATEMENT

57. The Committee takes note with satisfaction of the cooperation of the Turkish authorities during the inquiry, and congratulates them on having acted on many of its recommendations and taken measures intended to reinforce the implementation of the Convention and to improve the human rights situation in Turkey.

58. Nevertheless, the Committee remains concerned at the number and substance of the allegations of torture received, which confirm the existence and systematic character of the practice of torture in this State party.

59. The Committee expresses the hope that the new Government of Turkey, which was formed in June 1993, will take forceful and effective measures in order rapidly to end the practice of torture, in accordance with the provisions of the Convention.

Notes

1/ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44 (A/48/44).

2/ E/CN.4/1990/17.